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In the Matter of  
Policies and Rules  
Concerning Toll Fraud

)  
)  
) CC Docket No. 93-292

To: The Commission

COMMENTS OF THE  
UTILITIES TELECOMMUNICATIONS COUNCIL

Pursuant to Section 1.415 of the Commission's Rules, the Utilities Telecommunications Council (UTC) hereby submits its comments with respect to the Notice of Proposed Rulemaking (NPRM), FCC 93-496, released December 2, 1993, in the above captioned matter.

I. INTRODUCTION

UTC is the national representative on communications matters for the nation's electric, gas, water, and steam utilities, and interstate gas pipelines. Approximately 2,000 utilities and pipelines are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of customers to small, rural electric cooperatives and water districts serving only a few thousand customers. All utilities depend upon reliable and secure communications facilities in carrying out their public service obligations. In order to meet these communications requirements, utilities typically employ a

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"mix" of privately owned and operated land mobile, microwave and fiber optic systems, as well as services obtained from common carriers and other commercial telecommunications service providers.

Because of the nature of utility company service territories and the expansive size of their installed communications facilities, utilities are often the victims of telephone toll fraud. In the aggregate utilities experience millions of dollars of toll fraud on an annual basis. UTC submitted written comments for inclusion in the record of the Commission's October 9, 1992 En Banc hearing on toll fraud,<sup>1/</sup> and is pleased to have this opportunity to comment on the Commission's proposals to curb these abuses and better allocate the liability.

## II. GENERAL COMMENTS

In the NPRM the Commission requests comment on ways to better allocate the risks and responsibilities of toll fraud among carriers, users, and customer premises equipment (CPE) manufacturers. At present neither carriers nor equipment vendors have sufficient incentive to assist in curtailing toll fraud. In fact, current regulations and tariffs actually create a disincentive for carriers to prevent toll fraud, since the customer is liable for all charges, and these charges enhance the carriers net income. The FCC must use its authority to compel carriers to

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<sup>1/</sup> UTC Comments filed November 16, 1992, on FCC En Banc hearing on Toll Fraud, File No. 93-Toll Fraud-01.

revise their tariffs in order to make certain billing practices unreasonable.

UTC supports the enactment of legislation that would better define and penalize the crime of toll fraud. Further, law enforcement agencies should be given the means and authority to more effectively track and prosecute perpetrators of toll fraud. However, while stiffer penalties and prosecution efforts may eliminate or deter some "hackers," it is unlikely that tougher law enforcement alone will provide an adequate solution to this problem. The vast majority of toll fraud perpetrators do not have sufficient funds to make restitution.<sup>2/</sup> Accordingly, in conjunction with legislative efforts, the FCC should enhance its on-going consumer education campaign and enact policies that provide for a more equitable distribution of liability.

The Commission inquires as to whether it should establish an Industry Advisory Committee to recommend specific toll fraud solutions. The formation of an Industry Advisory Committee may be useful in coordinating efforts among the various industry segments and agencies fighting toll fraud, provided that the committee also has significant end-user customer representation. Otherwise, it would be unlikely to produce any significant results since it is in the carriers' best interest to maintain the status quo.

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<sup>2/</sup> UTC understands that a number of its member utilities have actually experienced toll fraud from incarcerated individuals using prison provided telephone facilities.

### III. PBX FRAUD

#### A. The FCC Should Adopt A Comparative Negligence Policy To Apportion Toll Fraud Liability

The high volume of communications that are integral to utility operations necessitates the use of on-premise private branch exchanges (PBXs). Unauthorized remote access to these PBX systems is one of the primary mechanisms by which utilities experience toll fraud. In order to avoid toll fraud utilities are willing to take all reasonable precautions, however, toll fraud hackers have become so persistent and creative that it is clear that end-user precautions alone cannot completely eliminate the risk of toll fraud. Therefore a more equitable apportionment of liability is needed.

The adoption of rules based upon a "comparative negligence" theory would be an appropriate means of apportioning toll fraud liability. Each party would only be liable to the extent that it was responsible for the unauthorized access and use resulting in the fraud.

##### 1. Responsibilities of Carriers

In developing comparative negligence rules for toll fraud it is necessary to determine the responsibilities of the various parties. Telephone common carriers should have an affirmative duty to warn customers of the general risks of toll fraud clearly and prominently in the first few pages of all tariffs.<sup>3/</sup> Such

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<sup>3/</sup> A possible requirement, is to require a person with authority within the customer's company to separately sign an  
(continued...)

warnings should also be transmitted in promotional literature, service contracts, and billing inserts.

Carriers should also be under a duty to provide certain network monitoring/control functions to offset possible known risks as part of their basic service offerings. In this way carriers would be subject to the same types of obligations traditionally imposed on other providers of common carrier or public facilities. An analogy can be drawn to "innkeeper statutes," that limit the innkeeper's exposure to liability for theft provided the customer is offered safekeeping facilities. In the telephone context, if the service provider knows that its facilities are not immune from breach, then it has both a duty to warn and a duty to provide free measures to protect the customer. For example, the carrier should suspend toll service to a number or group of numbers if charges for a particular billing period exceed a certain triggering amount, established by the customer. Carriers should also provide free blocking of service to certain area codes selected by the customer.

In addition carriers should be required to make extra fraud prevention and detection services available to customers at reasonable costs. For example, the provision of a service that: monitors for changes in a customer's calling pattern; or restricts the availability of operator-assisted calls without

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<sup>3/</sup>(...continued)  
acknowledgement of the general toll fraud risks contained in the tariff on an annual basis.

validation codes or credit cards.

1. Responsibilities of CPE Vendors

Customer premise equipment (CPE) vendors should also share in the apportionment of responsibility for toll fraud liability. CPE vendors should have an affirmative duty to warn of specific risks associated with the equipment that they are providing to customers. For example, a CPE vendor should disclose: the vulnerability of direct inward systems access (DISA) codes; or the availability of add-on equipment or features to protect against unauthorized use. CPE vendors should also be under a continuing duty to alert customers of known methods to circumvent the CPE's fraud-prevention capabilities.

2. Responsibilities of Customers

Finally, a measure of responsibility for toll fraud liability should reside with the customer. The customer should be obligated to employ reasonable measures made available by the carrier or the vendors. The customer should also be under a duty of reasonable care to prevent unauthorized access to their system by enacting and following internal security/control measures.

In settling disputes, once it is established that the calls in question were not authorized by the customer, the carriers and vendors should have the burden of persuasion to demonstrate that the customer did not employ reasonable measures to prevent/detect the toll fraud. Such a burden is reasonable, since it is the carriers and vendors that generally have knowledge of toll fraud

practices and procedures. Moreover, such a rule would create an incentive for carriers and vendors to help curtail toll fraud. Billing disputes involving toll fraud should be resolved through binding arbitration.

**B. Toll Fraud Equipment Warnings Are Necessary**

All PBX equipment purchased should be accompanied by explicit warnings on the toll fraud risks associated with the use of the equipment. Vendors should also be required to provide similar warnings with regard to all currently-installed PBX equipment.

**C. Procedures Should Be Developed To Revoke Registration Of Equipment That Is Particularly Susceptible To Fraud**

The Commission should develop procedures for revoking the registration of equipment known to be particularly susceptible to toll fraud, and where the vendor has not taken reasonable steps to retrofit the equipment with security features. However, the FCC should "grandfather" equipment that has already been purchased and is in operation, if the customer is warned and knowingly elects to assume responsibility of potential toll fraud. Otherwise, customers could be burdened with the costs of having to purchase replacement equipment.<sup>4/</sup>

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<sup>4/</sup> The Commission adopted a similar grandfathering provision for existing equipment in its proceeding adopting standards for direct inward dial. Report and Order, CC Docket No. 89-114, 5 FCC Rcd 6202 (1990).

#### IV. CONCLUSION

Neither carriers nor equipment vendors have sufficient incentive to assist in curtailing toll fraud. The FCC must use its authority to compel carriers to revise their tariffs in order to make certain billing practices unreasonable. Legislation should be enacted that would better define and penalize the crime of toll fraud.

In conjunction with legislative efforts, the FCC should enhance its on-going consumer education efforts and enact policies that provide for a more equitable distribution of liability. Specifically, it should adopt rules based upon a theory of "comparative negligence" that would apportion responsibility for toll fraud among all parties -- carriers, vendors and customers.

All PBX equipment purchased should be accompanied by explicit warnings on the toll fraud risks associated with the use of the equipment. Finally, the Commission should develop procedures for revoking the registration of equipment known to be particularly susceptible to toll fraud, where the vendor has not taken reasonable steps to retrofit the equipment with security features.

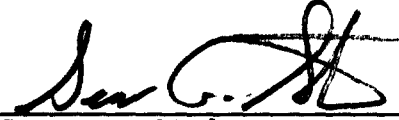


WHEREFORE, THE PREMISES CONSIDERED, the Utilities  
Telecommunications Council respectfully requests the Commission  
to take actions consistent with the views expressed herein.

Respectfully submitted,

UTILITIES TELECOMMUNICATIONS  
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